

ESTTA Tracking number: **ESTTA303799**

Filing date: **08/31/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185374
Party	Plaintiff CBS Broadcasting Inc.
Correspondence Address	Rebecca Borden CBS 51 West 52nd Street New York, NY 10019 UNITED STATES Rebecca.Borden@cbs.com
Submission	Motion to Compel Discovery
Filer's Name	Christopher P. Beall
Filer's e-mail	cbeall@lskslaw.com, chenning@lskslaw.com
Signature	/Christopher P. Beall/
Date	08/31/2009
Attachments	00238836.PDF (5 pages)(114947 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Trademark: **VITAMEATAVEGAMIN**
Application: 77/299,999
Filed: October 9, 2007
Published: March 25, 2008

CBS BROADCASTING Inc.,

Opposition No. **91185374**

Opposer,

v.

JAMIE MAHJOBI,

Applicant.

**OPPOSER’S MOTION TO COMPEL COMPLIANCE WITH DISCOVERY
OBLIGATIONS**

Opposer CBS BROADCASTING INC. (“Opposer”), through its counsel with Levine Sullivan Koch & Schulz, L.L.P., pursuant to Rules 37(a)(3)(A) and 37(f) of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120(e)(1), moves for an order from the Board compelling Applicant Jamie Mahjobi (“Applicant”) to comply with her discovery obligations in this case, in particular her obligation to provide Rule 26(a)(1) disclosures and to cooperate in the scheduling of her deposition.

In support of this motion, Opposer states as follows:

1. **Certificate of Conferral:** Pursuant to Fed. R. Civ. P. 37(a)(1), undersigned counsel for Opposer certifies that he has attempted to confer in good faith with Applicant

regarding the matters raised herein, but he has been unable to resolve these issues without intercession from the Board. Applicant has not responded to the most recent emails from Opposer's counsel.

2. In this case, the Board's amended scheduling order, mailed January 6, 2009, set a deadline for the parties to conduct the mandatory Discovery Conference no later than May 29, 2009, with the parties to exchange their initial Rule 26(a)(1) disclosures by June 28, 2009.

3. To date, Applicant has refused to participate in a Discovery Conference, indicating that she will only communicate with counsel for Opposer by way of email, and that she will not consent to either an in-person or telephonic meeting to cover the Discovery Conference issues.

4. The Applicant also has not provided any disclosures under Rule 26(a)(1). In an email sent on August 7, 2009, in response to contact from Opposer's counsel, Applicant indicated that she would send her Rule 26(a)(1) disclosures "early next week." When no disclosures were served on counsel for Opposer thereafter, Opposer's counsel sent a reminder email to Applicant on August 21, 2009. No response has been received by Opposer's counsel to this last email.

5. As a result of the lack of a Discovery Conference between the parties, Opposer's counsel has been unable to discuss with Applicant where and when she is available to sit for her deposition in this case. In an email message on August 7, 2009, Opposer's counsel raised this issue with Applicant and asked her to provide a date and location for deposition. When no response to this request was forthcoming, Opposer's counsel raised it again in an email sent to

Applicant on August 21, 2009. There has been no response from Applicant regarding this issue either.

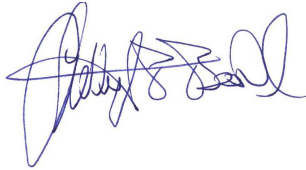
6. It is well established that all parties to an opposition proceeding have a duty to cooperate with respect to preparing a discovery plan and schedule, including an obligation to cooperate in the scheduling of a deposition. *See* Fed. R. Civ. P. 37(f); *see also S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1298 (TTAB 1997). Moreover, as a result of the revisions to the Trademark Rules, parties are now also required to provide the initial disclosures set out in Fed. R. Civ. P. 26(a)(1). *See* 37 C.F.R. § 2.120(a).

7. The failure of the Applicant to participate in a meaningful Discovery Conference, to provide any Rule 26(a)(1) disclosures, and to provide her availability for a deposition in this case are all violations of her obligations under the Rules, and these violations warrant an order from the Board directing Applicant to comply with her obligations. *See* Fed. R. Civ. P. 37(a)(3)(A) and 37(a)(3)(C); *see also* 37 C.F.R. § 2.120(e)(1).

WHEREFORE, Opposer CBS Broadcasting Inc. respectfully requests that the Board enter an order requiring Opposer, within five business days of the issuance of the order, to serve Opposer's counsel with her initial disclosures under Rule 26(a)(1), and to provide dates for her availability for a deposition within the county of her residence such that a discovery deposition may be conducted of her within sixty days of the Board's order.

Respectfully submitted this 31st day of August, 2009.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



Christopher P. Beall
1888 Sherman Street, Suite 370
Denver, Colorado 80203
Telephone - (303) 376-2400
Facsimile - (303) 376-2401
E-mail - cbeall@lskslaw.com

Attorneys for Opposer
CBS BROADCASTING INC.

CERTIFICATE OF SERVICE

I do hereby certify that on this 31st day of August, 2009, a true and correct copy of the foregoing **OPPOSER'S MOTION TO COMPEL COMPLIANCE WITH DISCOVERY OBLIGATIONS** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

Jamie Mahjobi
18034 Ventura Boulevard, # 195
Encino, California 91316-3516
usptojm@yahoo.com

/s Christopher P. Beall